

STATE BOARD OF EQUALIZATION



Appeal Name: William Connell

Case ID: ITEM #:

Date: 10/29/13 Exhibit No: 10.11

TP FTB DEPT PUBLIC COMMENT

AB 919 (Williams)

Repayment for Itinerant Veteran Vendors

SUMMARY

AB 919 reimburses certain veteran vendors for any sales tax, interest, and penalties not collected for the period between April 1, 2002 and April 1, 2010.

BACKGROUND

Veterans returning to civilian life struggle to re-integrate into society. Unable to find a job, many veterans become vendors selling art, food, books, among other items.

For many years certain veteran vendors argued Section 16102 of the Business and Professions Code (B&PC) exempts honorably discharged veterans from paying certain license taxes and fees for their sales of goods, wares, or merchandise they own (except alcoholic beverages). The enactment of Section 16102 of B&PC dates back to 1893, long before the establishment of Sales and Use Tax Law.

Veteran vendors believe they are exempt from paying certain state and local sales tax, however, the Board of Equalization (BOE) considered veteran vendors "retailers" and, therefore, collected sales tax, interest, and penalties. Due to the misinterpretation, veteran vendors failed to collect sales tax reimbursement from customers resulting in out of pocket payment to the BOE.

To clarify the dispute, Senate Bill 809 (2009) granted "consumer" reporting status to qualified itinerant vendors (QIV) until January 1, 2012. Under a "consumer" reporting status, QIVs making otherwise taxable sales are not required to obtain a seller's permit or report tax on those sales. Rather, QIVs are only required to pay tax on his or her cost of the taxable components of the products he or she sells, which has the effect of minimizing revenue loss and reporting burdens to specified small businesses. Senate Bill 805 (2011) extended these provisions to 2022.

NEED FOR THE BILL

While SB 809 and SB 805 helped QIVs from 2010 forward, they didn't address previously collected

sales tax. This bill creates a temporary grant program to reimburse qualified veteran vendors for sales tax, interest, and penalties not collected from customers dating back to April 1, 2002.

A qualified veteran vendor is someone who:

1. has paid state and local sales and use taxes between April 1, 2002 and April 1, 2010,
2. not collected sales tax reimbursement from customers and,
3. paid interest or penalties associated with tax liabilities.

AB 919 requires a qualified veteran vendor to submit a written claim before January 1, 2015 in order to obtain reimbursement. Further, BOE will provide the number of qualified repayments to the Controller on or before March 1, 2015. The total amount of funds available for qualified repayment is capped at \$50,000. If the total amount of claims filed exceeds \$50,000, the BOE will determine the pro rata share due to each qualified veteran. No interest will be paid on any qualified repayment.

This bill is necessary because hard-working veteran vendors misunderstood Section 16102 of the B&P Code. While the BOE appropriately collected any outstanding liabilities, veteran vendors did not collect sales tax reimbursement from customers, resulting in thousands of dollars paid out of pocket by qualified itinerant vendors to the BOE.

SUPPORT

California State Board of Equalization
Carpinteria Valley Chamber of Commerce
American Legion Auxiliary Unit 49
The Military Order of the Purple Heart, Chapter 750
Veterans United for Truth, Inc.

OPPOSITION

- None on file

FOR MORE INFORMATION

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QUESTION

WHY WOULD ANY RIGHT THINKING CALIFORNIAN OPPOSE THE STATEMENT OF PRINCIPLE WHICH PROVIDES THAT ALL FORMER MILITARY PERSONAL WHO COME WITHIN THE PROVISIONS OF THE ACT SET FORTH BELOW BE EXEMPTED FROM ALL LOCAL AND STATE TAX RELATED BURDENS?

CHAPTER CCXXXIV

An Act to establish a uniform system of county and township governments.

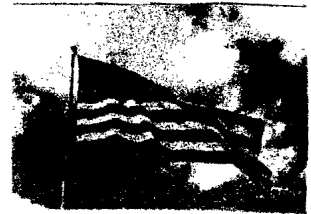
(Approved March 24, 1893.)

The People of the State of California, represented in Senate and Assembly, do enact as follows:

27. To license, for purposes of regulation and revenue, all and every kind of business not – prohibited by law, and transacted and carried on in such county, and all shows, exhibitions, and lawful games carried on therein; to fix the rates of license tax upon the same, and to provide for the collection of the same, by suit or otherwise; *provided*, that every honorably discharged soldier, sailor, or marine of the United States, who is unable to obtain a livelihood by manual labor, shall have the right to hawk, peddle, and vend any goods, wares, or merchandise, except spirituous, malt, vinous, or other intoxicating liquor, without payment of any license, tax, or fee whatsoever, whether municipal, county, or State; and the Board of Supervisors shall issue to such soldier, sailor, or marine without cost, a license therefore. A certificate of disability by a surgeon of the United States Army or Navy shall be sufficient proof of such disability, and a certificate of honorable discharge from the United States Army or Navy, or an exemplified copy thereof, shall be sufficient proof of such service and honorable discharge, and upon presentation a license shall be issued as aforesaid.

STATEMENT OF PRINCIPLE

(Special Exemption From Tax Related Burdens)



On March 24, 1893, the State of California adopted an Act (the "ACT"), Exhibit A, that recognized that "... every soldier, sailor or marine of the United States, who is unable to obtain a livelihood by manual labor, shall have the right to hawk, peddle and vend any goodswithout payment of any license, tax, or fee whatsoever...." (emphasis added)*.

By including the word, "whatsoever", the clear legislative intent was to remove ALL tax related burdens from this limited group of former military people.

Under the provisions of *California Code of Civil Procedure Section 1859 (Enacted 1872)*, Exhibit B, the intention of the legislature must be followed if at all possible.

However, subsequent, to the adoption of the ACT, other tax related acts were passed which did not specifically exempt this limited group from their provisions, and CONTRARY TO THE CLEAR INTENT OF THE LEGISLATURE, tax related burdens have been place on these former military people.

It is the position of this STATEMENT OF PRINCIPLE that, in the interests of justice and in keeping with the provisions of Section 1859 of the Code of Civil Procedure, the legislative intent of the ACT should be carried out and that all provisions of any law, state or local, that contradicts the clear intent of the ACT be modified so as to exempt this limited group from any state or local tax related burdens.

Specifically this STATEMENT OF PRINCIPLE is directed to the need to clarify Section 6051 (et seq.) of the Revenue and Taxation Code, copy attached as Exhibit C, to make it clear that the former military people who come within the provisions of the ACT are exempt from the requirements of collecting sales tax.

Request is hereby made that the proper parties take necessary and proper action to modify Section 6051 of the Revenue and Taxation Code and its related provisions to comply with the intent of the legislature and the ACT by specifically exempting the former military people who come within the provisions of the ACT from the requirements of collecting sales tax.

Respectfully submitted,

William Connell,
US Army Veteran

**A copy of Section 16102 of the Business and Professions Code that relates to this matter is attached as Exhibit D.*

CHAPTER CCXXXIV

An Act to establish a uniform system of county and township governments.

(Approved March 24, 1893.)

The People of the State of California, represented in Senate and Assembly, do enact as follows:

27. To license, for purposes of regulation and revenue, all and every kind of business not – prohibited by law, and transacted and carried on in such county, and all shows, exhibitions, and lawful games carried on therein; to fix the rates of license tax upon the same, and to provide for the collection of the same, by suit or otherwise; *provided*, that every honorably discharged soldier, sailor, or marine of the United States, who is unable to obtain a livelihood by manual labor, shall have the right to hawk, peddle, and vend any goods, wares, or merchandise, except spirituous, malt, vinous, or other intoxicating liquor, without payment of any license, tax, or fee whatsoever, whether municipal, county, or State; and the Board of Supervisors shall issue to such soldier, sailor, or marine without cost, a license therefore. A certificate of disability by a surgeon of the United States Army or Navy shall be sufficient proof of such disability, and a certificate of honorable discharge from the United States Army or Navy, or an exemplified copy thereof, shall be sufficient proof of such service and honorable discharge, and upon presentation a license shall be issued as aforesaid.

1859. In the construction of a statute the intention of the Legislature, and in the construction of the instrument the intention of the parties, is to be pursued, if possible; and when a general and particular provision are inconsistent, the latter is paramount to the former. So a particular intent will control a general one that is inconsistent with it.

Exhibit B

6051. For the privilege of selling tangible personal property at retail a tax is hereby imposed upon all retailers at the rate of $21\frac{1}{2}$ percent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in this state on or after August 1, 1933, and to and including June 30, 1935, and at the rate of 3 percent thereafter, and at the rate of $21\frac{1}{2}$ percent on and after July 1, 1943, and to and including June 30, 1949, and at the rate of 3 percent on and after July 1, 1949, and to and including July 31, 1967, and at the rate of 4 percent on and after August 1, 1967, and to and including June 30, 1972, and at the rate of $33\frac{3}{4}$ percent on and after July 1, 1972, and to and including June 30, 1973, and at the rate of $43\frac{3}{4}$ percent on and after July 1, 1973, and to and including September 30, 1973, and at the rate of $33\frac{3}{4}$ percent on and after October 1, 1973, and to and including March 31, 1974, and at the rate of $43\frac{3}{4}$ percent thereafter.

Exhibit C

16102. Every soldier, sailor or marine of the United States who has received an honorable discharge or a release from active duty under honorable conditions from such service may hawk, peddle and vend any goods, wares or merchandise owned by him, except spirituous, malt, vinous or other intoxicating liquor, without payment of any license, tax or fee whatsoever, whether municipal, county or State, and the board of supervisors shall issue to such soldier, sailor or marine, without cost, a license therefor.

Exhibit D

October 10, 2013

Ms. Diane F. Boyer-Vine
Legislative Counsel
State Capitol
Sacramento, CA 95814

Dear Ms. Boyer-Vine:

I request a written opinion regarding the State's current and historical tax treatment of qualified veterans, as defined in Business and Professions (B&P) Section 16102, which states:

Every soldier, sailor or marine of the United States who has received an honorable discharge or a release from active duty under honorable conditions from such service may hawk, peddle and vend any goods, wares or merchandise owned by him, except spirituous, malt, vinous or other intoxicating liquor, without payment of any license, tax or fee whatsoever, whether municipal, county or State, and the board of supervisors shall issue to such soldier, sailor or marine, without cost, a license therefor.

(Amended by Stats. 1941, Ch. 646.)

My general interest is whether the exemption for veterans from taxes under §16102 provides an exemption from the State sales tax. More specific questions are listed below.

I realize that your Office has produced other opinions on this general topic in response to earlier requests from other legislators. (Two examples are enclosed.) I also am aware that the Attorney General has issued a relevant opinion (No. 09-402, July 19, 2010), a copy of which is attached. I believe that my request differs from earlier requests in terms of substantive breadth, historical depth (pre-1901), determination of controlling legal statute, and legislative intent.

The background information and consequent questions will address two separate issues:

1. The scope of the taxes and fees from which a qualified veteran vendor is exempted.
2. Confirming the earliest controlling statute that determines the eligibility of a qualified veteran vendor in terms of the vendor's "ownership" relation to the goods being sold.

Background: Scope of Taxes and Fees Covered by the Exemption

According to the annotated codes, B&P §16102 was derived from former Political Code Section 4041.14, as added by Chapter 755, Statutes of 1929 (Assembly 773). Later amendments do not affect the language substantively. However, the concept, and to a great degree, the language presenting the concept predate the 1929 enactment. To document this history, I am including documents regarding Assembly Bill 773 and earlier law containing the veteran's exemption.

In 1893 the Legislature enacted County Government Act of 1893, which appears to be the first act "to establish a uniform system of county and township governments." Section 27 of that Act (Chapter 234 of California State law) contains the exemption language in fairly similar format to the present section, particular with regards to the tax language. The Section continued in this act for a period of years.

In 1897 the Legislature reenacted the exemption adopted similar language as part of section 25 of the County Government Act of 1897.

Yet another similar section became part of the Political Code (Section 3366) in 1901. An annotated version showing the early California case law referring to the section is provided.

A separate act providing somewhat similar exemption for ex-Union soldiers and sailors from only the license requirement appears in 1905.

An annotated version of the Political Code from 1924 shows the parallel appearance of former Political Code Section 3366 and Section 4041, subdivision 25, as well as the 1905 enactment is provided.

The 1929 text through amendments of 1935, codification as Business & Professions Code Section 16102 in 1941 and the amendment to the new code section in that same year. The changes made seem non-substantive at this point in time.

Civil War era

Legislative Act of 1893

In 1893, the California Legislature passed “An Act to Establish a Uniform System of County and Township Governments,” which took effect in 1895 as Chapter 234 of California State law. The act was a large omnibus bill that generally established the powers, duties, and responsibilities of California’s counties and towns.

Section 25 of the act, entitled “General Permanent Powers of Board,” (relating to the powers of county boards of supervisors) granted boards of supervisors the following authority:

“To license, for purposes of regulation and revenue, all and every kind of business not prohibited by law, and transacted and carried on in such county, and all shows, exhibitions, and lawful games carried on therein; to fix the rates of license tax upon the same, and to provide for the collection of the same, by suit or otherwise; ...”

This power was granted with the following caveat:

“... *provided*, that every honorably discharged soldier, sailor, or marine of the United States, who is unable to obtain a livelihood by manual labor, shall have the right to hawk, peddle, and vend any goods, wares, or merchandise, except spirituous, malt, vinous, or other intoxicating liquor, **without payment of any license, tax, or fee whatsoever, whether municipal, county or State**; and the Board of Supervisors shall issue to such soldier, sailor, or marine, without cost, a license therefor.”

(Ch. 234, §25, Para. 27).

It is believed this was the first time this exemption for disabled veterans (the “Veterans’ Exemption”) appeared in California law although it is possible to have existed earlier in statute. The Veterans’ Exemption currently is found in California’s B&P Code.

Legislative Act of 1897

Similar language to the above-quoted portion of the County Government Act of 1893 was re-enacted as subdivision 25 of section 25 of the County Government Act of 1897. The County Government Act of 1897 was apparently enacted to supersede the County Government Act of 1893. With one minor capitalization difference (namely, the word “state” is not capitalized in the 1897 provision), the first sentences of the 1893 and 1897 versions are identical, including the punctuation of the key phrase of the exemption (i.e., “without payment of any license, tax, or fee whatsoever”). (See Stats. 1897, ch. 277, § 25; subd. 25, p. 465.)

Legislative Act of 1901

In 1901, the Veterans' Exemption was placed in the California Political Code. In January 1901, Assembly Bill 456 was introduced to amend Political Code Section 4045, which related to the powers of county boards of supervisors to impose a license tax on persons, businesses, and occupations. This initial version of AB 456 listed specific businesses upon which a county board of supervisors could impose a license tax, with no mention of a Veterans' Exemption. A subsequent Assembly amendment to AB 456 replaced the list of specific businesses upon which a county board of supervisors could impose a license tax with language stating that all persons, occupations, and businesses could be subjected to a license tax. In March 1901, AB 456 took its final form after it was gutted and amended in the Senate.

In its final form, AB 456 no longer amended Political Code Section 4045, but instead created Political Code Section 3366. The new section mirrored -- almost word-for-word -- the provision in Chapter 234 that gave county boards of supervisors the authority to impose a license tax, subject to the Veterans' Exemption. When Section 3366 was enacted in March 1901, it did not explicitly repeal or amend any section of Chapter 234.

There were two main substantive differences between Political Code Section 3366 and Chapter 234. First, Section 3366 applied to counties and towns, while Chapter 234 only applied to counties. It appears that the legislative intent behind creating Section 3366 was to give cities and towns the same business licensing power and Veterans' Exemption that Chapter 234 previously had only given to counties. Second, the Veterans' Exemption in Section 3366 omitted a comma between the words "license" and "tax" that was present in Chapter 234. As enacted, the Veterans' Exemption in Section 3366 stated that qualified disabled veterans must be issued a business license "without payment of any license tax, or fee whatsoever, whether municipal, county or state." With the exception of the missing comma, this language mirrors in both the 1893 veterans' exemption (Chapter 234) and the exemption in the County Government Act of 1897. *It is likely the 1901 omission of the comma between the words "license" and "tax" was accidental.*

Legislative Act of 1907

In 1907, the Legislature enacted Political Code section 4041, which superseded the County Government Act of 1897. (Stats. 1907, ch. 282, § 1, p. 370.) As enacted, subdivision 22 of Political Code section 4041 contains the same substantive language with regard to the veterans' exemption from license taxes contained in the two prior noncodified versions, including the insertion of a comma between the words "license" and "tax" but not between "tax" and "or" (i.e., "without payment of any license, tax or fee whatsoever").

Legislative Act of 1929

In 1929, the Legislature enacted Assembly Bill 773 (Stockwell). This bill amended Political Code Section 4041, which covered the jurisdiction and powers of county boards of supervisors, by adding Political Code Section 4041.14. The new section duplicated Political Code Section 3366 by giving county boards of supervisors the power to regulate all licit business within their borders and impose licensing fees upon those businesses, but was limited to counties. When Section 4041.14 was enacted, it did not explicitly repeal or amend any part of Chapter 234 or Section 3366.

(Also note that, two years earlier, a Senate measure proposed changes to existing Section 4041 concerning the jurisdiction and powers of the board of supervisors similar to that accomplished in 1929. Senate Bill 683 proposed the location of the license, and exemption from licensing and taxes text in Section 4041. This bill did not get out of its first policy committee in 1927.)

The Veterans' Exemption in Political Code Section 4041.14 mirrored exactly the Veterans' Exemption in Chapter 234. As enacted, Section 4041.14 stated that qualified veterans must be issued a business license "without payment of any license, tax or fee whatsoever, whether municipal, county or state." *Section 4041.14 included the comma between the words "license" and "tax" originally present in Chapter 234, while Section 3366 did not, further strengthening the likelihood that the omission of the comma in Section 3366 was accidental.*

Legislative Act of 1941

In 1941, the Legislature added several sections to the B&P Code that consolidated and revised county and city business licensing law. The 1941 act added Division 7, Part 1, entitled "Licensing for Revenue and Regulation," to the B&P Code. Part 1 had two relevant chapters – Chapter 1 covered business licensing by cities, while Chapter 2 covered business licensing by counties, and each chapter contained a Veterans' Exemption. When the act took effect in September 1941 it repealed Political Code Sections 3366 and 4041.14 and did not repeal or amend any part of Chapter 234.

Chapter 1 of the act, which related to cities, added Section 16000 to the B&P Code and granted cities the power to license and collect any license fee from any licit business conducted within their jurisdiction. Chapter 1 also created Section 16001, which contained a Veterans' Exemption that required qualified veterans to be issued a business license "without payment of any license tax or fee whatsoever, whether municipal, county or State." Except for the comma omitted between the words "license" and "tax" this language is identical to the Veterans' Exemption in Chapter 234. The Veterans' Exemption in Section 16001 is missing the comma between the words "license" and "tax" that was present in Chapter 234, Political Code Section 4041.14, and B&P Code Section 16102. *This supports the argument that the omission of the comma in Section 16001, like the omission of the comma in Political Code Section 3366, was accidental.*

Chapter 2 of the act, which related to counties, added Section 16100 to the B&P Code and granted counties the power to license and collect any license fee from any licit business conducted within their jurisdiction. Chapter 2 also created Section 16102, which contained a Veterans' Exemption that required qualified veterans to be issued a business license "without payment of any license, tax, or fee whatsoever, whether municipal, county or State." *This language is identical to the Veterans' Exemption in Chapter 234 and further supports the argument that the omission of the comma in Section 16001, like the omission of the comma in Political Code Section 3366, was accidental.*

Relevant Case Law

Only two published California appellate cases have any discussion directly relevant to the veterans' exemption statutes discussed above: *In re Gilstrap* (1915) 171 Cal. 108 (*Gilstrap*) and *Brooks v. County of Santa Clara* (1987) 191 Cal.App.3d 750 (*Brooks*).

Analytical Considerations

The Veterans' Exemption survives in its present form in B&P Code Sections 16001, 16001.5, and 16001.7 (all of which relate to business licensing by cities), and Section 16102 (which relates to business licensing by counties). Section 16001 is substantively the same as it was when enacted in 1941 with the exception that it broadens the class of qualified veterans eligible for the Veteran's Exemption. Section 16001 still lacks the comma, which for reasons mentioned above, likely was omitted by accident.

The original Veterans' Exemption in Chapter 234 contained a comma between the words "license" and "tax." The comma disappeared when the Veterans' Exemption appeared in 1901 in Political Code Section 3366. The comma reappeared in 1929 in Political Code Section 4041.14, and in 1941 in B&P Code Section 16102. Due to ignorance of Chapter 234's existence, California courts declared that the 1929 comma insertion was accidental and the comma should not be taken into consideration when interpreting the meaning of the Veterans' Exemption. In light of the fact that the comma was present in 1893 and reappeared in 1929 and 1941, it is likely the comma's omission in 1901 was accidental.

It appears that the Veterans' Exemption and its surrounding language was pasted directly from Chapter 234 which was created in 1893, into Political Code Section 3366 in 1901, which was then copied into Political Code Section 4041.14 in 1929, which was then copied into B&P Code Sections 16000 *et. seq.* in 1941, where the Veterans' Exemption exists today. Other than the language of the Veterans' Exemption itself and the placement of the Veterans' Exemption within Chapter 234, it is unknown whether there is any extrinsic evidence that may shed light on the legislative intent behind creating the Veterans' Exemption.

The significance of the comma between "license" and "tax" has been debated previously. In *Brooks v. County of Santa Clara*, 191 Cal.App.3d 750 (1987), California's Sixth Appellate Court

reasoned that the comma between the words “license” and “tax” in the Veterans’ Exemption in B&P Code Section 16102 was accidentally inserted in 1929. The court reasoned that, because there was no comma in the phrase when it appeared in 1901 in Political Code Section 3366, the insertion of the comma in the phrase in 1929 in Political Code Section 4041.14 was inadvertent. However, the *Brooks* court apparently was unaware that when the Veterans’ Exemption first appeared in 1893 in Chapter 234, it contained a comma between the words “license” and “tax” because the court did not cite Chapter 234 in its discussion of the legislative history of the Veterans’ Exemption. Because the court did not have full knowledge of the legislative history behind the Veterans’ Exemption and the comma at issue, the court erroneously concluded that the comma was inadvertently inserted in 1929 in Political Code Section 4041.14 and in B&P Code Section 16102.

In July 2010, the California Department of Justice issued Opinion No. 09-402 (*93 Ops. Cal. Atty. Gen. 70*) that concluded the comma inserted between the words “license” and “tax” was accidental, and therefore the Veterans’ Exemption in B&P Code section 16102 does not establish a general exemption from state or local sales taxes. The Department of Justice opinion relied extensively on the *Brooks* decision in reaching its conclusion that the comma was accidentally inserted. Like the court in *Brooks*, the Department of Justice opinion did not take into consideration the presence of a comma in the Veterans’ Exemption in Chapter 234. Accordingly, the reliability of the conclusion the Department of Justice reached is questionable because the *Brooks* court erred in concluding that the comma in the Veterans’ Exemption was accidentally inserted.

As shown above, relying on the *Brooks* decision and the 2010 Department of Justice opinion is likely to mislead the casual observer into believing that the Veterans’ Exemption was originally intended not to insert a comma between the words “license” and “tax.” However, the earlier law (1893) places a comma not only between “license” and “tax,” but also between “tax” and the conjunction “or,” which precedes the word “fee.” The second comma, which is optional, shows a serial relationship between three nouns – “license,” “tax,” and “fee.” *Given the history of the Veterans’ Exemption, it is likely that a comma was intended to be included between the words “license” and “tax.” Its early presence in 1893, its apparently accidental disappearance in 1901, and its restoration in 1929 strongly suggest that conclusion.*

Background: Relationship between Vendor and Goods Being Sold

The 1941 enactment creating the existing B&P Code Section 16102 states that the qualified veterans “may hawk, peddle and vend any goods, wares or merchandise owned by him, except spirituous, malt, vinous or other intoxicating liquor”

In 2009 the Legislature enacted SB 809 (Ch. 621 Stats. 2009), which was sponsored formally by the BOE and authored by the Senate Committee on Veterans Affairs. This bill added Section 6018.3 to the Revenue and Taxation Code. SB 809 provides that, for purposes of the Sales and

Use Tax (SUT) Law, specified United States (U.S.) veterans shall be considered consumers of, and not retailers of, food products and nonalcoholic beverages they sell.

Specifically, SB 809:

1. Provides that a "qualified itinerant vendor" is a consumer of, and shall not be considered a retailer of specific tangible personal property (TPP), food products and nonalcoholic beverages that he/she sells.
2. Provides that a person is a "qualified itinerant vendor" when all of the following apply:
 - a. The person was a member of the U.S. Armed Forces, who received an honorable discharge or a release from active duty under honorable conditions.
 - b. The person is a sole proprietor with no employees; and,
 - c. The person has no "permanent place of business" in this state.
3. Defines "permanent place of business" as any building or other permanently affixed structure, including a residence that is used in whole or in part for making sales of, or taking orders and arranging for shipment of, food products and beverages. "Permanent place of business" does not include any building or other permanently affixed structure, including a residence, used for the storage of food and nonalcoholic beverages or for the cleaning and storage of equipment used in the preparation and vending of food and nonalcoholic beverages.
4. Provides that this bill shall not apply to a person who is:
 - a. Engaged in the business of serving meals, food, or drinks to a customer at a location owned, rented, or otherwise supplied by the customer; or,
 - b. Operating a vending machine.

With regard to the bill's stated purpose, the BOE stated: "In recent years, we have seen large numbers of veterans return home from two major foreign conflicts in which the United States Armed Forces are actively engaged. Many of these returning veterans face continuing challenges from physical or psychological disabilities directly related to their military service. The BOE has been advised in public hearings that some of these veterans seek to make a modest living from the itinerant sales of food and beverages."

Some critics have alleged that the bill appears to have been crafted narrowly by the BOE in order to meet the unique needs of the one persistent vendor and end the public debate over the appropriate application over the broader, existing veterans' exemption that is the focus of this opinion request.

If the aim was to provide relief to itinerant veterans who have served their country with honor, why does this bill only apply to sales of food products and beverages? Under SB 809, other itinerant veterans who sell non-edible TPP are still considered retailers and required to obtain a seller's permit.

QUESTIONS/ISSUES RAISED

Scope of Taxes and Fees in the Exemption

1. It is unclear whether the 1893 Veterans' Exemption (Chapter 234) has ever been explicitly amended or repealed. If the Veterans' Exemption was amended or repealed, what specific act repealed or amended it?
2. If Chapter 234 was never repealed, is it still in effect in parallel with subsequent statutes? If not, why not? Would subsequent statutes that are more narrowly constructed merely be reaffirmations of a subset of Chapter 234's grant of exemption rather than replacements of Chapter 234?
3. What was the legislative intent behind the Veterans' Exemption in Chapter 234?
 - a. Chapter 234, Section 25, paragraph 27 gives counties the power to "fix rates of license tax." This license tax power is modified by the Veterans' Exemption, raising the presumption that the scope of the exemption is limited to county license taxes. However, what do we make of the language of the Veteran's Exemption that states "without payment of any license, tax, or fee whatsoever, whether *municipal, county or state*"?
 - b. If the plain meaning of the text in Chapter 234 is to exempt qualified veterans from merely paying licensing fees associated with running a qualified business, why would the Legislature separate out the words "license," "tax," and "fee" in the Veterans' Exemption
 - c. Taking into account that Chapter 234 says, "without payment of any license, tax, or fee whatsoever, whether municipal, county or State," was the Veteran's Exemption (Chapter 234) originally intended to exempt qualified veterans from merely paying licensing fees associated with running a qualified business, or was it intended to be a general exemption from paying any sales or use taxes related to running a qualified business?
 - d. Was this exemption intended to be limited to Civil War veterans or applied more broadly?

- e. The Legislature likely intended a comma to be present in between the words “license” and “tax.” The presence of a second comma before the conjunction “or” clearly indicates the intent for this to be a serial list of three nouns. Considering the placement of these commas, how would this guide the interpretation of the scope of the Veterans’ Exemption?

More specifically, if existing law were found to include an earlier statute (such as Chapter 234) that contains the comma between “license” and “tax” and a later-enacted statute that does not contain a comma in that location, in the absence of any other interpretive consideration, how would they be harmonized? Specifically, does not the wording of the second statute constitute merely a reinforcement of a small portion of the first statute? (In the sense that the second statute’s “any license tax” or “(any) license fee” are just subsets of the first statute’s broad scope of “any license, fee, or tax whatsoever.”)

Taking the history of the Veterans’ Exemption into consideration, would the legislative intent and or purpose behind Chapter 234’s Veterans’ Exemption be applicable to Political Code 3366, and its progeny, Political Code 4041.14 and Business and Professions Code Sections 16000 et. seq.? If the Veterans’ Exemption in Chapter 234 is still in effect, would it trump the current B&P Code Section 16000-series Veterans’ Exemption?

- 4. Political Code Section 3366, which later became B&P Code Section 16101, and Political Code Section 4041.14, which later became B&P Code Section 16102, added the following language to the Veterans’ Exemption: “provided, however, no license can be collected or any penalty for the nonpayment thereof...”
 - a. Does this language indicate that the contemporaneous usage of the word “license” meant a license was equivalent to a tax or fee? Would a person pay a “license,” similar to paying a tax?
 - b. Does this language give meaning to the comma? Or that that the legislature interpreted Chapter 234 as exempting payment for licenses and taxes and fees?
 - c. In general, what is the distinction between a “license tax” and a “license fee?” in the context of the statutes under discussion in this request?

5. Does available case law (*Gilstrap*, *Brooks*, or any other case) shed light on this matter?
6. Do we have any indications as to how local governments and the Board of Equalization interpreted Chapter 234, Political Code Section 3366, Political Code Section 4041.14, and B&P Code Section 16102 in light of their actual execution of those laws from the effective date of Chapter 234 onward? Were veteran vendors, in practice, exempted from any state or local taxes and fees other than those directly associated with business licenses based upon the statutes under discussion in this request?

Relationship of Vendors to Goods Being Sold

7. The 1941 enactment creating the existing B&P Code Section 16102 states that the qualified veterans “may hawk, peddle and vend any goods, wares or merchandise owned by him.” The section includes the phrase “owned by him” to be used in determining the eligibility of goods that qualify for sale within the scope of the veterans exemption.
 - a. By designating the qualifying goods as being “owned by” the veteran, this phrase required the veteran to be in a consumer status with regard to the goods. What is the phrase’s meaning, what was the purpose of including the phrase, and what is its legal effect?

For example, was it included to protect government entities from being defrauded by veterans who might be induced into acting as “fronts” for other nonqualified business entities? [Such as has occurred in the case in the State’s Disabled Veteran Business Enterprise (DVBE) Program.]
 - b. SB 809 (2009) added to the Revenue and Taxation Code “veterans exemption” language stating that “(a) qualified itinerant vendor is a consumer of, and shall not be considered a retailer of, tangible personal property owned and sold by the qualified itinerant vendor. . . .”
 - i. What is the phrase’s meaning, what was the purpose of including the phrase, and what is its legal effect?
 - ii. Is it redundant to or different from the effect of the existing “owned by him” in B&P 16102, which has been law since 1941?

Should you or your deputies have questions about this request, you are authorized to address them to Wade Teasdale with the Senate Veterans Affairs Committee at (916) 651-1503. After receiving authorization from Mr. Teasdale, you also may discuss the history of this issue with William Connell (805) 566-6549.

Thank you for your Office's exemplary competence and its consistently prompt and courteous attention to all my requests.

Sincerely,

BEN HUESO
Senator, 40th District
Chair, Committee on Veterans Affairs

Enclosures:

1. Assembly Bill 773 (Stockwell, 1929)
 - a. All versions of AB 773
 - b. Procedural history of AB 773 from the 1929
 - c. Assembly Final History Summary of AB 773 from the 1929 Legislative Digest, prepared by Legislative Counsel
 - d. Excerpt regarding Assembly member James E. Stockwell from the 1929 "Legislative Handbook."
2. Senate Bill 683 (Chamberlin, 1927)
 - a. All versions of SB 683
 - b. Procedural history of SB 683 from the 1927 Senate Final History
3. Former Political Code section 4041 excerpted from Deering's Political Code, 1924
4. Chapter 57, Statutes of 1855.
5. Excerpt regarding section 27 from Chapter 234, Statutes of 1893
6. Chapter 209, Statutes of 1901
7. Chapter 297, Statutes of 1905
8. Chapter 436, Statutes of 1915
9. Excerpt regarding former Political Code section 3366 from The Political Code of the State of California adopted March 12, 1872, edited by James H. Deering
10. Chapter 188, Statutes of 1917
11. Chapter 164, Statutes of 1921
12. Excerpt regarding former Political Code section 3366 and 4041 subd. 22 from The Political code of the State of California adopted March 12, 1872, edited by James H. Deering
13. Chapter 138, Statutes of 1935
14. Chapter 61, Statutes of 1941
15. Chapter 646, Statutes of 1941
16. Brooks v. County of Santa Clara, 191 Cal.App.3d 750; 236 Cal.Rptr. 509 [Apr. 1987]
17. Legislative Counsel Opinion #0902454, March 15, 2009

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18. Legislative Counsel Opinion #4756, March 20, 1997
19. Attorney General Opinion No. 09-402, July 19, 2010